

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-126203-09

Date:

July 27, 2009

Legend

Parent =

Sub #1 =

Sub #2 =

Sub #3 =

Sub #4 =

Company Official =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This letter responds to a letter dated May 20, 2009, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension for Parent and its subsidiaries to make an election (the "Election") to file a consolidated federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations, effective for the tax year that ended Date 3. The material information is summarized below.

Parent was formed on Date 1. On Date 2 Parent acquired all the stock of Sub #1, Sub #2, and Sub #3. None of the acquisitions was a reverse acquisition within the meaning of § 1.1502-75(d)(3). At the time of the Date 2 acquisition, Sub #3 owned all the stock of Sub #4, and Sub #3 continues to own all the stock of Sub #4.

An election under § 1.1502-75(a)(1) to file a consolidated return for the taxable year that ended on Date 3 was required to be filed by the due date of Parent's return (including extensions). Parent intended to file the Election, but for various reasons a valid Election was not timely filed. The period of limitations on assessment under section 6501(a) has not expired for Parent's or any of its subsidiaries' taxable years in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and its includible subsidiaries to file the Election, provided Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and

301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Parent and its includible subsidiaries to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching Form 851 and a Form 1122 for each of the includible subsidiaries) for the taxable year that ended Date 3.

The above extension of time is conditioned on the taxpayers' (Parent's and its subsidiaries) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Parent and its subsidiaries qualify substantively to file a consolidated return. Further, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)